



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 232

RIN 0750-AH19

**Defense Federal Acquisition Regulation Supplement; Accelerate
Small Business Payments (DFARS Case 2011-D008)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement to accelerate payments to all small business concerns.

Effective Date: [Insert date of publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Ms. Lee Renna, telephone 703-602-0764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the Federal Register at 76 FR 23505 on April 27, 2011, amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide accelerated payments for all small business concerns. The rule removes the

term "disadvantaged" from the language at DFARS 232.903 and DFARS 232.906(a) (ii), thereby extending the accelerated payment policy uniformly to all small business concerns.

In combination with the change to the regulations, DoD immediately began a phased implementation to update the entitlement and payment systems so that they could accommodate accelerated payments. During the initial phase, the Defense Finance and Accounting Service modified DoD's largest system, the Mechanization of Contract Administration Services (MOCAS) system. MOCAS processes approximately 57 percent of the dollars paid through DFAS. The upgrades to MOCAS were completed on June 1, 2011. Over the course of the next year, subsequent legacy entitlement and payment system upgrades are scheduled for completion and deployment.

Two respondents submitted public comments. DoD reviewed the comments in the development of the final rule. A discussion of the comments is provided as follows.

II. Discussion and Analysis of the Public Comments

Comment: The first respondent commented that the rule would ensure their company had adequate cash flow to promptly pay its vendors.

Response: This positive endorsement of the rule is noted.

Comment: The second respondent stated that the wording of the rule is ambiguous. Rather than stating it is DoD policy to

pay small business concerns "...as soon as possible...", the respondent recommended that the rule should specify the number of days for processing payments to small business.

Response: The authority for DoD's payment policy is the Office of Management and Budget's (OMB's) Prompt Payment Regulations at part 1315 of title 5 of the Code of Federal Regulations. The phrase "...as quickly as possible..." was taken verbatim from those regulations.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5

U.S.C. 601, et seq., and is summarized as follows:

This final rule adopts as final, without change, the interim rule that revised DFARS 232.903 and 232.906(a) (ii) to allow accelerated payment processes for all small business concerns. The objective of the rule is to pay small businesses as quickly as possible.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

There were no comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the rule.

Analysis of the Federal Procurement Data System indicates that approximately 60,000 small businesses had active contracts in Fiscal Year 2010. It is reasonable to assume a similar number of small businesses will be positively affected by the use of accelerated payment procedures.

This final rule imposes no new reporting or recordkeeping requirements on the small business community.

DoD expects this rule to have a significant positive economic impact on all small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it extends accelerated payments to all small business concerns. There were no significant alternatives identified that would meet the objectives of the rule.

V. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Burden Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 232.

Government procurement.

Mary Overstreet

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR part 232, which was published at 76 FR 23505 on April 27, 2011, is adopted as a final rule without change.

[FR Doc. 2011-29859 Filed 11/17/2011 at 8:45 am; Publication

Date: 11/18/2011]